

APPROVAL OF PRETREATMENT LEGAL AUTHORITIES

PURPOSE

This document is intended to clarify EPA's requirements for submission of pretreatment legal authorities as part of the process of obtaining approval of a POTW pretreatment program or of a legal authority modification in Pennsylvania.

GENERAL

All POTWs required to implement a pretreatment program must have legal authority as described in 40 C.F.R. 403.8(f)(1) to enforce the requirements of the program. As stated in that regulation, the authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, the legal authority must enable the POTW to¹:

- 1) deny or condition new or increased contributions of pollutants to the POTW (403.8(f)(1)(i)).
- 2) require compliance with applicable pretreatment standards and requirements (403.8(f)(1)(ii)).
- 3) control users through permits, orders, or similar means to ensure compliance with applicable standards and requirements (403.8(f)(1)(iii)).
- 4) require the development of a compliance schedule by users (403.8(f)(1)(iv)(A)).
- 5) require the submission of all notices and self-monitoring reports (403.8(f)(1)(iv)(B)).
- 6) carry out all inspection, surveillance and monitoring procedures necessary to determine compliance or noncompliance by users (403.8(f)(1)(v)).
- 7) obtain remedies for noncompliance by users including the authority to seek injunctive relief and seek or assess penalties of at least \$1000 per day for each violation (403.8(f)(1)(vi)).

¹The legal requirements listed below are not a complete statement of the requirements of the federal Pretreatment Regulations. Please refer to 40 CFR 403.8 for complete details.

8) comply with confidentiality requirements
(403.8(f)(1)(vii)).

In order to meet the legal authority requirements of the pretreatment regulations, the POTW must be able to create and enforce the requirements outlined above throughout the entire service area (including the "POTW municipality" and all other municipalities served by the treatment plant).

PUBLICLY OWNED TREATMENT WORKS PENALTY LAW

The Pennsylvania Publicly Owned Treatment Works Penalty Law 35 P.S. 752.1 et seq (Penalty Law) provides essentially two grants of authority. The statute provides a grant of authority to seek injunctive relief to gain compliance with pretreatment standards, but only upon the occurrence of one of four specified conditions, or where a court determines that "other enforcement procedures would not be adequate" (35 P.S. 752.5(a)). Those conditions are: I) where a discharge presents an imminent danger or substantial harm to the POTW or the public; II) where a discharge presents an imminent or substantial endangerment to the POTW; III) where the discharge causes the POTW to violate its discharge permit; and IV) where the industrial user has shown a lack of ability or intention to comply with a pretreatment standard. While the Penalty Law provides useful powers to POTWs to address these serious events, it does not provide a general authority to a POTW to enforce the requirements of 40 C.F.R. section 403.8(f) listed above. The injunctive enforcement powers granted by the Penalty Law, while limited, are available to POTWs for use with industrial users throughout the entire service area.

The second grant of authority regards penalties. Prior to the Penalty Law, municipalities and municipal authorities may not have been able to comply with the regulatory requirement for penalty authority to seek penalties of \$1000 per day for each violations. The Penalty Law provides that POTWs which were previously limited in their penalty authority may now assess penalties of \$25,000 per day per violation. However, the Penalty Law "shall not be construed to modify jurisdiction or procedures for the assessment or collection of fines and penalties by municipalities or publicly owned treatment works" (35 P.S. 752.6(b)). Therefore, if the POTW did not previously have jurisdiction to impose penalties, the Penalty Law does not grant jurisdiction.

REQUIRED LEGAL AUTHORITY DOCUMENTATION

It is the POTW's responsibility to demonstrate that it has adequate legal authority to implement the program throughout the service area. This demonstration is accomplished through a

statement from the POTW's attorney which explains how the legal authority requirements of 40 CFR section 403.8(f) are met². The attorney's statement should include copies of all statutes, ordinances, contracts, or agreements which provide the POTW's authority.

To demonstrate that adequate legal authority exists, the required solicitor's statement should include a point by point list of the authorities relied upon to enforce the eight activities described in 40 CFR section 403.8(f)(1). Where a POTW serves a number of municipalities, the statement of legal authorities must include an explanation of the jurisdictional basis which permits the POTW to exercise the required authority in other municipalities (typically, by delegation of authority to implement and/or enforce a pretreatment ordinance adopted in a given contributing municipality).

As noted above, the Penalty Law in itself does not provide the POTW with all of the necessary legal authority for the pretreatment program. While it provides enforcement authority to POTWs in some situations it does not grant authority to POTWs to carry out most of the requirements of 40 CFR 403.8(f)(1).

EPA APPROVAL OF POTW LEGAL AUTHORITIES

Whether the POTW's legal authority submission is a part of an original program approval or is seeking modification of a previously approved legal authority³, the statement of legal authority, including all supporting documentation demonstrating the required authority, must be reviewed and approved by EPA to be effective as part of a federally required pretreatment program. The approval process includes public notice of EPA's intent to approve the legal authority, and provides for formal approval or disapproval after consideration of comments received, followed by a second public notice announcing the approval or disapproval.

While there is no requirement for the submission of a draft of

²An attorney's statement may not be needed in instances where the POTW is modifying a previously approved legal authority (e.g., the POTW is modifying all existing ordinances within the previously approved legal authority framework). However, in all cases, copies of the enacted ordinances or other legal authority modification is required. Please call your EPA contact (see attachment) if you have questions as to whether an attorney's statement is needed.

³Modifications to pretreatment legal authorities are considered "substantial modifications" under 40 CFR 403.18.

the legal authority, it is recommended that the POTW submit a draft of its legal authorities to EPA for review prior to adoption of ordinances or signing of agreements. This should help to reduce or eliminate situations where amendments are needed to previously adopted/signed documents.